United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-7686

United States Court of Appeals

FOR THE SECOND CIRCUIT

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P/S

CHAS. KURZ & CO.,
Owners of the S/S BENNINGTON,
Petitioner-Appellee,

vs.

UNION OIL COMPANY OF CALIFORNIA,
Respondent-Appellant.

BRIEF FOR APPELLEE

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Statement

This appeal is by Union Oil Company of California (hereinafter UNION) from an order of Judge Kevin T. Duffy confirming an Arbitration Award and an order denying UNION's motion to vacate the same Arbitration Award, and the judgment entered thereon in the United States District Court for the Southern District of New York. The Appellee. CHAS. KURZ & Co. (hereinafter KURZ) owners of the vessel S/S BENNINGTON had recovered in arbitration for damage to its vessel while under charter.

The Question on Appeal

This appeal raises the question whether this Court will review on its merits an Arbitration Award and consider whether the Court should interfere with the arbitration process.

Facts

The American flag tanker BENNINGTON, had been chartered by KURZ to UNION under a Standardtime two star form of charter party, dated August 27, 1968 for the carriage of petroleum products between ports on the West Coast of the United States including Alaska.

That charter party provided for arbitration at New York and when a dispute arose between owner and charterer (KURZ & UNION) both parties voluntarily went to arbitration. After many hearings and extensive testimony, the arbitrators rendered an Award in favor of KURZ. Appellant seeks to vacate the Award on grounds not specified in Title 9 U.S. Code §10. Appellee respectfully submits that the Court should not concern itself with the merits and findings of the arbitrators, but since Appellee's Brief in the main deals with the issues that have already been decided by the arbitrators, Appellee briefly reviews the facts.

The BENNINGTON was drydocked and surveyed in December of 1968, just prior to its entering into service under the charter party. At the time of the vessel's drydocking, the Port Engineer of KURZ was present. He testified before the arbitrators that the vessel was in all respects in good order and condition. The vessel was tight, staunch and sound, with no holes or damage to its hull.

The vessel then went on hire to UNION under the charter party and in January of 1969 was directed by UNION to proceed and load a full cargo at the Christie Lee loading platform at Cook Inlet, Drift River, Alaska.

The Master testified before the arbitrators that he had never been to the Christie Lee platform nor had the BENNINGTON. The Christie Lee platform, of which UNION was a part owner, was a relatively new installation having commenced operations only in the latter part of 1968.

The Master testified that the BENNINGTON arrived at Homer, Alaska to pick up its pilot for the voyage to the platform. The vessel arrived during clear weather in daylight hours with no sign of any ice conditions. When the pilot boarded the vessel, the Master requested any information he had as to conditions to be encountered on the voyage.

At the time in question, the United States Coast Guard, who kept track of weather conditions in the area did not maintain an ice patrol nor concern itself with the gathering of any information concerning ice conditions to be encountered on the actual passage up Drift River. The Coast Guard's concern was to obtain information as to weather conditions such as wind, precipitation, etc.

The pilot testified that he had sought information for the voyage concerning ice conditions from fellow pilots, who had just made the journey and also by radioing ahead to UNION's platform for on site information.

During the passage from Homer, Alaska to the platform, both the Master and the pilot testified that the BENNINGTON encountered patches of ice and the heavy ice. The vessel was slowed to approximately 2 to 3 knots and made its way through ice. When the BENNINGTON had passed through this ice to open water, the Master and pilot testified that they discussed continuing further or returning to the pilot station. They also relied upon the information supplied to the Master in his call to the charterer's loading platform. The Master testified that it took approximately 20 minutes to raise the platform by radio. He was informed that, although it was then dark at the platform, by use of a searchlight, the platform personnel stated that it was fairly clear in their area and to come ahead. Upon his return to the vessel's bridge the vessel had passed through the ice. It was then decided to proceed to the platform.

The Master and pilot testified that the vessel arrived off the platform at approximately midnight of January 14, 1969, and waited several hours for a favorable tide in order to tie up and commence loading.

When the vessel was finally able to dock at the platform and commence loading, large ice floes bore down upon the vessel against its bow on the port and starboard sides and in a number of instances as the ice began to build up between the vessel and the platform it would force the vessel way from the platform, thus bringing its lines taut, and then roll over and under the vessel striking and damaging the sides and bottom of the hull.

It was reported to the Master late on the afternoon of January 15 that the vessel had been holed by the ice and that the engine room reported possible damage to the ship's propeller.

The Master then informed the platform personnel of his decision to cease loading operations and depart the platform as soon as possible. Unfortunately, heavy ice floes were now forcing against the outboard side of the vessel so that it was pressed against the platform's wooden fender to such a degree as to create a friction severe enough to produce smoke and the vessel was unable to maneuver away from the platform for some 2 to 3 hours.

The pilot, at the time of the vessel's arrival, during its mooring and after departing the platform succeeded in photographing, with a motion picture camera, the conditions encountered, and this film was shown to the arbitration panel.

The Master and pilot also testified that upon finally departing the platform and attempting to reach the pilot station the vessel encountered further ice conditions which did damage to the vessel's sides and hull. In fact, when

the vessel arrived at the Union Oil Terminal in San Francisco, the discharging port for the cargo, it was immediately noted that there were large chunks of salt water ice in the vessel's tanks and that there were a number of holes in the lower bow plates of the vessel's bow, port and starboard.

When the vessel was again drydocked after discharge and surveyed as to the damages encountered on the voyage, the KURZ's Port Engineer testified before the arbitrators that he spent some 60 to 61 days aboard the vessel together with surveyors on behalf of UNION overseeing the repairs necessary and also testified with exhibits as to the extent of the damages incurred and the actual costs to repair.

It was determined that the total cost to repair the vessel was $661,567. The arbitrators determined that UNION had breached the charter party by directing the vessel to an unsafe berth and port, but disallowed any damages which occurred to the vessel on its voyage up the river and awarded the sum of $595,395.90, plus interest, for the damage incurred at the platform and returning therefrom. The charter between KURZ and UNION had a safe berth clause.

The arbitration went forward pursuant to the terms of the contract, each party appointing commercial men who are members of the Society of Maritime Arbitrators, Inc. KURZ appointed as its arbitrator a former president of Triton Shipping who was a tanker consultant to Amerada-Hess and had been with the War Shipping Administration and Tanker Chartering Manager of Paragon Oil Co., Mr. Arthur E. Ferris. UNION appointed Captain George T. Stam who had sailed as Master of tanker vessels and had been associated with the Universal Maritime Agencies and was then with the Bunge Corp. The two arbitrators so

chosen appointed Mr. John M. Reynolds as Chairman. Mr. Reynolds was president of A.S.B.A. Worldscale and is a man who had been in shipping since the 1920's. A retired Naval Officer, he was the first president of the Society of Maritime Arbitrators and for many years was Secretary of the Association of Ship Brokers & Agents. Both KURZ and UNION signed a Submission Agreement which placed the dispute before the Arbitrators and testimony and Briefs were presented to the Arbitrators after several hearings. The Arbitrators thereafter rendered their Award. There are not any grounds for vacating that Award.

Appellee's Contentions

Appellee's primary contention is that appellant has absolutely no standing or right to seek a review on the merits of an Award of Arbitrators. The Arbitration Act specifically states under what circumstances an Award may be vacated by a Court. None of the grounds set forth in the Act are present here.

Because of appellant's position appellee will refute on the merits each of the arguments advanced by appellant even though this is tantamount to a rehearing of the facts and law.

POINT I

There Is Not Any Basis In Law to Reverse the Judgment of the District Court Confirming an Award of Arbitrators.

The contract entered into between appellant and appellee, the charter for the vessel BENNINGTON, contained an agreement to arbitrate all disputes before arbitrators at New York. After a dispute arose between Kurz and

Union, the parties appointed arbitrators and proceeded to arbitration. The parties also entered into a submission agreement (8A, 9A). That submission agreement, after setting forth the issues, provided that the decision and Award of the Arbitrators ". . . shall be final and binding upon the parties hereto and may be made an order of any Court of competent jurisdiction."

The United States Arbitration Act, Title 9 U.S. Code provides in §10 as follows:

> "In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
>
> (a) Where the award was procured by corruption, fraud, or undue means.
>
> (b) Where there was evident partiality or corruption in the arbitrators, or either of them.
>
> (c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
>
> (d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
>
> (e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators."

Appellant's contentions are not that there was corruption, fraud, partiality, misconduct, etc. Appellant's contentions are that the arbitrators did not properly read the ice clause of the charter, that the arbitrators had no evidence to conclude that the Master relied on the safe berth clause and that the awarding of a recovery for damage to the vessel on its outward voyage is "manifest disregard of the law."

This Court in 1974 had before it a case which in principle follows the appeal in this case. That case is *I/S Stavborg* v. *National Metal Converters, Inc.*, 500 F.2d 424 (2d Cir. 1974). In *I/S Stavborg* the appellant raised the issue whether the decision of the majority of the arbitrators should be reversed on the grounds of the award being manifestly in disregard of the law. This Court considered at length the arbitrators award. In the course of the opinion this Court states:

> "It seems rather anomalous, but had the arbitral majority failed to render a written opinion in this case, our ability—ignoring the question of our power—to review that decision would be greatly limited. See Sobel v. Hertz, Warner & Co., 469 F.2d 1211, 1214-1215 (2d Cir. 1972). Indeed, the AAA apparently discourages the practice of written arbitral opinions in order to insulate the arbitral process from any judicial review. Faced, however, with a reasoned opinion that is, in our view, clearly erroneous both in logic and result we are confronted with the question whether it is nevertheless our obligation under the Federal Arbitration Act to affirm the award."
>
> • • •
>
> "All of appellant's claims here reduce to the proposition that the arbitrators misconstrued the contract. The arbitral majority justified reading clause 8 out

> of the charter party by considering clause 1 to conflict with it and then by placing heavy reliance on the August 30 letter from appellant's president, supra, which seemed to acknowledge that appellant was responsible for the freight given Rosal's failure to pay. In a court of law, this evidence would probably not have been properly admitted if, as we feel to be the case, the intent of the parties were made abundantly clear from within the four corners of the charter party. Even if admitted it should have been entitled to little or no weight since the letter was delivered when the discharge was almost complete and the check accompanying the letter was to be held in escrow pending effort by the owner to secure payment from the consignee. *We see no basis, however, to reverse the award even though it is based on a clearly erroneous interpretation of the contract. Whatever arbitrators' mistakes of law may be corrected, simple misinterpretations of contracts do not appear one of them.*" (emphasis added) (page 433)

This is not a new doctrine of this Court. One of the most famous cases among attorneys concerned with charter parties is the decision of this Court in *Amicizia Societa Nav.* v. *Chilean Nitrate & Iodine S. Corp.*, 274 F.2d 805 (2d Cir. 1960). A dispute arose concerning ambiguous language with respect to a charter party and this Court noted that if the matter were before it *de novo* it would be much persuaded by the arguments of appellant, but this Court in its opinion at page 808 stated that the Court's function in confirming or vacating an arbitration award is severely limited. After extensively reviewing the cases this Court concluded that under the Arbitration Act the Court was not authorized in vacating an award or modifying it because of erroneous findings of fact or misinterpretation

of law. The subject was also reviewed at the Admiralty Law Institute held at Tulane University in 1975 where the above cases were cited in an article entitled "Maritime Arbitration—Some of the Legal Aspects" 49 Tulane Law Review 1035 at page 1048-9.

None of the arguments presented by the appellant demonstrate that the law was not in fact applied correctly by the arbitrators and the District Court. Instead, appellants ask that this Court disregard the Arbitration Act and place itself in the position of the Arbitration Panel, which is clearly outside of the purpose and letter of the Arbitration Act and the cases decided thereunder.

While a provision was made in the Federal Arbitration Act for vacating an Arbitration Award (9 U.S.C. 10), nowhere therein is there a provision for judicial review of an Award.

This question of manifest disregard is not new. It requires the Court to set aside the judgment of the arbitrators and submit the disputes of the parties to its own judgment. This attempted practice has been most strenuously denounced by the Courts for many years.

In *Burchell* v. *Marsh*, 58 U.S. 344, 349 (1854), the Supreme Court stated:

15. "Arbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. As a mode of settling disputes, it should receive every encouragement from courts of equity. If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or fact. A contrary course would be a substitution of the judgment of the chancellor in place

> of the judges chosen by the parties, and would make an award the commencement, not the end, of litigation."

While the appellants would have the Court believe that the lack of a statutory basis for vacating an Arbitration Award has been supplanted by a principle entitled "manifest disregard," quoting from *Wilko* v. *Swan*, 346 U.S. 427 (Supreme Court 1953), they fail to explain that the Court in *Wilko* v. *Swan*, supra did not establish as a principle how manifest disregard affected the integrity of the Arbitration Award for purposes of vacating it. In fact, the Court stated at page 437:

> "The United States Arbitration Act contains no provision for judicial determination of legal issues such as is found in the English Law."

In *Wilko* v. *Swan*, supra, the Court was very much concerned with the less than equal footing which existed between a disadvantaged purchaser of securities, who is not an issuer or dealer in them, and an issuer or dealer, who sells securities. In fact, the dictum of the Court with respect to the arbitral process was stated in the context of subjecting the non-issuer, dealer and purchaser to press any future disputes concerning the securities to arbitration and not to a Court of law, in violation of the Securities Act of 1933, which Congress passed specifically to protect him.

Indeed, in *San Martine Compania De Navegacion S.A.* v. *Saguenay Terminals Limited*, 293 F. 2d 796 (9th Cir. 1961), also cited by the appellants, in commenting on the dictum of *Wilko* v. *Swan*, supra, stated at page 801:

> "The Court did not undertake to define what it meant by 'manifest disregard' or indicate where the line

would be drawn between a case of 'manifest disregard' and a case of error in interpretation of the law."

Indeed, in the *San Martine*, supra, the Court offered at least two possible interpretations of the manifest disregard argument, and still found no basis within the Federal Arbitration Act, supra, to vacate the Arbitration Award.

The application of the notion of manifest disregard, if applicable at all, is severely limited. *Trafalgar Shipping Co.* v. *International Milling Co.*, 401 F.2d 568 (2d Cir. 1968); *Saxis Steamship Co.* v. *Multifacs International Traders, Inc.*, 375 F.2d 577 (2d Cir. 1967); *Office of Supply, Republic of Korea* v. *New York Navigation Co.*, 469 F.2d 377 (2d Cir. 1972); *I/S Stavborg* v. *National Metal Converters, Inc.*, 500 F.2d 424 (2d Cir. 1974); *Manifest Disregard of Law and The United States Arbitration Act*, Jack Berg, Lloyd's Maritime and Commercial Law Quarterly, May 1975.

There is no basis under the Arbitration Act, supra, that permits the vacating of this Arbitration Award, which was confirmed by Judge Duffy and made a judgment of the United States District Court.

POINT II

None of the Six Points Enumerated In Appellant's Brief Are a Basis For Vacating the Arbitration Award and Also Fail on the Merits.

While the arguments of the appellant in its brief concern itself with facts decided by the arbitrators, which should not be subject to review by a Court under Section 10 of the Federal Arbitration Act, the appellee feels obliged to comment on the arguments presented.

1. In its first point appellant argues that the arbitrators interpretation of the "ice clause" namely that the Master should proceed through the ice where practical, was an interpretation which implied terms not present in the charter party.

The appellant argues that the Master was obligated to refuse to proceed as soon as he had first noticed the presence of ice. A simple reading of the Arbitration Award clearly shows that the arbitrators were setting a standard of conduct by which the Master should exercise his own judgment under the ice clause. For example, if the ice encountered by the vessel during the trip was nothing more than a minimal amount floating about in the water, appellant argues that the Master could have refused to proceed. If this were the case, it is quite possible that the Arbitration would have included a dispute by the charterers that the Master had no right to refuse to proceed and that the ship would have been off-hire during the period of his refusal.

It is clear that the arbitrators were clarifying the rights which the charterers could rely upon to require the Master to proceed in the face of ice.

2. In point two of the appellant's brief, they state that because of the standard of proceeding where practical was stated by the arbitrators in their Award, the appellant was surprised and had no way to answer such a determination.

It should be pointed out that the standard which the arbitrators state in their Award was also to the benefit of the appellant.

The appellant not only had the opportunity to cross-examine the Master of the vessel at the time of his appearance before the Arbitration Panel, but also was present

at the taking of the deposition of the pilot in Alaska and cross-examined him. The cross-examination of both these witnesses by the appellant was lengthy. If the appellant chose to cross-examine these witnesses to show that the Master should have refused to proceed, and did not address its questions to what conditions the pilot and Master would have considered as a basis for not proceeding, it is not the fault of the arbitrators.

3. In point three, the appellant states that the appellee is not entitled to be compensated for damages sustained by the vessel on the outward voyage from the platform.

The charter party upon which the Arbitration was based contained a safe berth warranty. The arbitrators determined on the facts that this warranty was breached when the vessel sustained damages by ice while at the platform.

When the Master was informed that the hull of the vessel had been holed and there was possible damage to the vessel's propeller, he decided to halt the loading of cargo and proceed away from the platform for the safety of the cargo and vessel.

Clearly, it logically follows that if the cargo and vessel were imperiled by the condition encountered when the vessel was ordered to the unsafe berth by the appellant, then any damage sustained in attempting to extricate the vessel from the same condition without the fault of the Master or vessel is chargeable to the appellant. It seems clearly logical by appellant's argument, that had the vessel remained at the platform and been damaged so severely by the ice that it became a total loss, the owner could be compensated, but appellant argues in attempting to save the cargo and vessel to reduce the loss, the appellant then has no responsibility for those consequences flowing from its breach.

4. In point four, the appellant argues that because the Master did not have the specific charter party on board with the specific clauses he did not know of the safe berth warranty and did not rely on it, and therefore there can be no breach of it.

In cross-examining the Master the appellant specifically asked the Master:

"Q. I believe you testified that it is your prerogative or would be your prerogative to wait until conditions improve?

A. Yes, I realize it is my prerogative and it was my decision to leave there in time. We left there due to this heavy ice because they did not want us to leave. The personnel on the platform wanted to give us a full load. They wanted to take a full load out. It was my decision to leave due to the heavy ice.

Q. Would it not also be your prerogative to turn back at any point?

A. That's right, that's what I anticipated when I went and called the platform. I was anticipating turning back and leaving.

Q. What is the basis of your prerogative, the prerogative you speak of?

A. As Master of the ship.

Clearly, the arbitrators determined on the facts presented to them that the Master was well aware that he could have refused to proceed to Christie Lee if in his judgment, as Master, the vessel was imperiled by the conditions encountered on the way to the platform.

5. In point five, the appellant argues that the Award of arbitrators was not rendered within the precise period of time required under the Society rules for the rendering of the Award. Specifically they refer to Section 32 of the Rules of the Society of Maritime Arbitrators, which provides that an Award is to be rendered not later than 90 days from the receipt by the arbitrators of the last evidence, transcript or brief, whichever shall be the last received. In fact, the last "evidence, transcript or brief" was a letter dated March 7, 1975 (86A, 87A) from appellant to the panel arguing against evidence contained in the letter of appellee's counsel dated February 27, 1975, (94A, 95A, 96A). In addition, appellant's arbitrator had become incapacitated sometime in April of 1975, and the arbitrators, (60A) had requested the acquiescence of both appellant and appellee to await his recovery so that the entire panel could deliberate. Both the appellee and the appellant agreed in writing (61A) to waive the time limit.

6. Finally in point six, the appellant charges the Chairman of the panel with the failure to disclose the acquisition of prior knowledge bearing on the dispute. Specifically, it argues that since the Chairman had been a member of an Arbitration Panel involving a vessel which had suffered damage by ice in the area of Drift River he was predisposed to reach the same conclusion in the present arbitration.

It should be pointed out that the Award concerning that prior dispute was rendered on September 29, 1971, and the only question for the arbitrators was the interpretation of the word "indemnity" as contained in that charter party with respect to shipowner's insurance for possible vessel damage. The question of how the ice had caused the damage and whether the charterers were liable in any way had

already been agreed to between the parties and the former question was all the arbitrators were concerned with. There is no indication in the award; *The Achilleus* (72 A.M.C. 1970, not otherwise reported, confirmed by the United States District Court for the Southern District of New York 73 A.M.C. 666 not otherwise reported), that the facilities at Drift River or the ice conditions or other factual, geographical information was presented to the panel or in any way relied upon by them.

Further, the first hearing on the Arbitration of the BENNINGTON took place on August 9, 1973, and the appellant, who should have had knowledge of the existence of the earlier Award never asked the Chairman if he were involved in that Award nor did it challenge him on any question that he might be predisposed in this matter as a result of having been on the previous panel.

POINT III

A Vessel Owner is Entitled to Recover For Damage to His Vessel Caused by the Charterer's Breach of the Safe Berth Warranty Contained in the Charter Party.

Appellant has conceded that the charter contained a Safe Berth Warranty. The arbitrators found on the facts that this warranty was breached by the charterers.

In the case of *American President Lines, Ltd.* v. *U.S.A.*, 208 F. Supp. 573 (N.D. California S.D. 1961), the Court stated:

> ". . . make it very clear that a charterer cannot escape liability for damage ultimately resulting from a directive that the chartered vessel go to an unsafe port or berth merely because the captain in attempting to comply, follows an obviously risky course of action in

preference to an available alternative which might have avoided the damage. In most of the decisions finding liability on the part of the charterer there was a danger foreseeable to the captain and an available alternative."

* * *

"The decisions recognize that when a charterer directs a vessel to a port the captain believes to be unsafe, he is confronted with a difficult dilemma. He may refuse to comply, thus thwarting the desires of the charterer and assuming the risk of an ultimate determination that the port was not in fact unsafe. Or, he may attempt to comply, and run the risk of making a miscalculation in seeking to avoid the danger to which the charterer's directive has subjected the vessel. When a captain has been placed in such a dilemma by a charterer's breach of contract in directing the vessel to an unsafe port, the entire burden of responsibility for the safety of the ship cannot legally be shifted to the captain. If the captain elects to attempt to comply with the charterer's directive, it would be inequitable to relieve the charterer of liability for harm caused by the peril which his wrongful demand created merely because the captain's choice of alternative courses, which give promise of avoiding such peril, proves to be incorrect. Thus, the applicable decisions have established the principle that the charterer is not relieved of legal responsibility for the consequences of his breach of contract unless the course followed by the captain is so imprudent that it can fairly be said to be an intervening act of negligence." (page 576)

The appellee calls the Court's attention to a paper entitled "Safe Ports" authored by Stephen J. Stapleton and

Jones F. Devlin, Jr. and George H. Evans, which was presented at the Second International Congress of Maritime Arbitrators, in Athens, Greece in 1974. In that article, Mr. Stapleton states that among other things, arbitrators should rely upon the Master's judgment and that the Master's judgment should not lightly be set aside.

In the case of *The Dagmar* [1968] 2 Lloyd's Rep. 563, Mr. Justice Mocatta found charterers at fault and in breach of the charter party where the vessel was damaged as a result of lack of safety in the berth, in that the pier to which the vessel had been directed, afforded no shelter from the winds and swell. In addition, in the *Houston City* [1953], I Lloyd's Rep. 131, the Court determined as to the question of the responsibility of the charterer to provide a safe berth for a vessel, as follows:

> "Where the charterer designates the berth, he is bound to take reasonable precautions to ascertain that it is safe, and, if necessary, warn the master."

In addition, in the case of *Park S.S. Co.* v. *The Cities Service Oil Co.*, 182 F.2d 804 (2 Cir. 1951), the time charterer of a tanker had designated Hingham Bay as the place where the vessel could safely anchor. In fact, the vessel sustained bottom damage on two occasions and the charterers were held liable because of the breach of their duty to designate a safe berth. The Court held that a safe place means a place *entirely safe* and not one which is partially safe or *safe part of the time*. The Court also held that the vessel's officers were not negligent in failing to intervene with the pilot's orders unless the pilot was doing something obviously dangerous.

There were ample grounds both on the facts and the law for the arbitrators to find that the Safe Berth Warranty contained in the charter party was breached and that the

charterers were responsible for the consequences of that breach.

The arbitrators found that the Safe Berth Warranty was breached, and rendered their Award accordingly.

CONCLUSION

The Arbitration Award was properly rendered and is not open to review under the law.

The orders of the District Court and the judgment entered thereon should be affirmed.

Respectfully submitted,

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UNION OIL COMPANY OF CALIFORNIA,

Respondent-Appellant.

CERTIFICATE OF SERVICE

----------X

WE HEREBY CERTIFY that a copy of the within brief of the Appellee was this date served on :

MENDES & MOUNT
Attorneys for Respondent-Appellant
27 William Street
New York, New York

Dated: New York, New York

March 12, 1976

KIRLIN, CAMPBELL & KEATING

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